

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DARREN CUFF, ) Docket No. 10 C 1349  
)  
Plaintiff, ) Chicago, Illinois  
) February 27, 2012  
v. ) 9:00 a.m.  
)  
TRANS STATES HOLDINGS, INC., )  
TRANS STATES AIRLINES, GOJET )  
AIRLINES, and ED TROWBRIDGE, )  
Individually, )  
)  
Defendants. )

VOLUME 1-A  
TRANSCRIPT OF PROCEEDINGS - Jury Trial  
BEFORE THE HONORABLE HARRY D. LEINENWEBER, and a Jury

APPEARANCES:

For the Plaintiff: CAFFARELLI & SIEGEL LTD by  
MR. ALEJANDRO CAFFARELLI  
MR. BRADLEY S. MANEWITH  
MR. DAVID ZEHNER  
180 North Stetson  
Suite 3150  
Chicago, Illinois 60601

For the Defendants: MR. DAVID J.A. HAYES III  
MS. LESLIE ELLEN CAVENDER  
MS. ALLISON SCHULTZ  
Trans States Holdings, Inc.  
11495 Navaid Road  
Bridgeton, Missouri 63044

Court Reporter: GAYLE A. MCGUIGAN, CSR, RMR, CRR  
Federal Official Court Reporter  
219 South Dearborn, Room 1944  
Chicago, Illinois 60604  
312-435-6047  
Gayle\_McGuigan@ilnd.uscourts.gov

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1 (In open court outside the presence of the jury.)

2 THE COURT: Good morning.

3 THE CLERK: 10 C 1349, Cuff versus Trans States  
4 Holdings.

5 THE COURT: The plaintiff filed seven motions in  
6 limine. Defense none, as I understand it.

7 The first motion, to bar evidence he consulted with  
8 attorneys.

9 Any objection to that?

10 MR. HAYES: Well, yes, your Honor.

11 The evidence about the consultation with attorneys,  
12 Darren has previously waived that.

13 He sent a copy of the e-mails about his consultation  
14 with attorneys to us while he was still employed with us.

15 He also told his roommate Angela at that time.

16 We think that that's very relevant about his decision  
17 never to return to work as part of the calculation of the  
18 damages in this case.

19 MR. CAFFARELLI: Your Honor, first of all, the e-mail  
20 that was copied to them, that wasn't us. That was some other  
21 attorney that he contacted prior to retaining us. And I don't  
22 know that he told Mr. Kenny that --

23 THE COURT: Here's what I'll do:

24 I'll grant it except that you may question him as to  
25 letters that mention that he contacted an attorney. All right?

1 MR. HAYES: Thank you, your Honor.

2 MR. CAFFARELLI: What about the -- we have the exhibit  
3 that's attached to the motion. Specifically, there's this  
4 e-mail to his doctor.

5 THE COURT: Which one? First motion, that would be --

6 MR. CAFFARELLI: The first one --

7 THE COURT: I don't have an e-mail. There's no --  
8 wait a minute. There's no e-mail attached to mine.

9 MR. CAFFARELLI: There's no exhibit to that first  
10 motion in limine?

11 THE COURT: Well, there's Exhibit A, which is some  
12 transcript. I think that may be -- well, there's an Exhibit A,  
13 transcript. Anyway --

14 MR. CAFFARELLI: It's Exhibit B to the motion.

15 THE COURT: All right. To Darren Cuff from -- you  
16 may -- he may question him as to that.

17 MR. HAYES: Thank you, your Honor.

18 THE COURT: He indicates what the lawyer -- advice he  
19 gave, so it's not -- waive -- would have waived the privilege.

20 Number 2, to limit or exclude plaintiff's medical  
21 records and conditions.

22 MR. HAYES: Yes, your Honor. We object in its  
23 entirety. The whole basis, at least in part, of our defense in  
24 this case is that Mr. Cuff would be unable to return to work.

25 Under the standard of the FMLA, to be entitled to any

1 damages, he's going to have to prove he could have come back to  
2 work at some point.

3 And the medical evidence we believe is overwhelming  
4 that shows he would never have been able to come back.

5 THE COURT: Yes, but my understanding is there's no  
6 expert witness.

7 MR. HAYES: No, we don't feel like we need an expert.  
8 We're calling his own doctor who testified during his  
9 deposition that Darren is addicted to narcotics, as well as a  
10 variety of other things.

11 We just think that, you know, that on its face should  
12 be enough evidence without any additional need for experts or  
13 confusion because he couldn't have come back to work.

14 MR. CAFFARELLI: Your Honor, I disagree.

15 What they're trying to do is re-litigate the issue of  
16 whether or not he was qualified for FMLA in the first place,  
17 which they tried to do at the motion for summary judgment  
18 stage.

19 And as we argue in the motion, if you don't do that at  
20 the certification phase, you can't go back and try to do that  
21 again that he somehow was ineligible for FMLA leave.

22 As to this addiction to narcotics, it's a gross  
23 misrepresentation of what the doctor said.

24 That's why, even if it's somehow relevant under  
25 Rule 403, it should be excluded.

1 THE COURT: Well, we'll see what the doctor has to  
2 say, if he's going to testify.

3 MR. CAFFARELLI: Well, you know, the issue is that  
4 it's going to come up on plaintiff's cross-examination  
5 beforehand.

6 And this motion is kind of tied in with the narcotic  
7 prescription drug use motion as well.

8 THE COURT: All right. Okay.

9 Well -- let's see, the next one is use of alleged  
10 abuse of prescription narcotics.

11 MR. HAYES: Your Honor, I -- we object to this, the  
12 same reason.

13 I mean, we want to present evidence of Darren's  
14 inability to return to work as well as his misrepresentations  
15 during his employment about his conditions.

16 THE COURT: Well --

17 MR. HAYES: We never had a chance during his  
18 employment -- plaintiffs argue that we should have done this  
19 pre-certification test.

20 We never did a pre-certification test, as your Honor  
21 may recall, because we didn't believe Mr. Cuff was eligible for  
22 FMLA because we didn't have the prerequisite number of  
23 employees within 75 miles, so we never even got to the question  
24 of should we seek another doctor or --

25 THE COURT: Well, you must show -- defendant must show

1 they would have fired someone had they been apprised of the  
2 evidence.

3 The presentation of policies and procedures were  
4 inadequate, at least so far, as to the summary judgment.

5 Additionally, the Seventh Circuit has said that mere  
6 policy showing the company could have fired someone for a  
7 transgression is not the same as showing that they would have  
8 fired him.

9 And, therefore, to the extent you can show that you  
10 have fired employees for similar transgressions, such as --  
11 what would be a comparable thing, then otherwise I don't think  
12 you can bring that in.

13 MR. HAYES: As to the motion in limine for the  
14 narcotics evidence, the prescription?

15 THE COURT: Right. Right.

16 Now, if you can show that you fired people for  
17 identical or very, very similar procedures for transgressions,  
18 then I think you can argue that you would have fired plaintiff.  
19 But just because you could have fired him doesn't -- as I read  
20 the Seventh Circuit law, which is *Sheehan versus Donlan Corp.*,  
21 170 (sic.) F.3d 1039 --

22 MR. HAYES: Well, I understand, your Honor, but I  
23 guess since we're just talking about the damages, Section 2617  
24 of the FMLA provides that he can't recover unless he shows he  
25 was prejudiced by the violation, and specifically then can only

1 recover for damages in time periods which he otherwise -- or  
2 when he otherwise couldn't return to work. And that's what we  
3 want to establish.

4 MR. CAFFARELLI: But, Judge, that doesn't affect the  
5 analysis.

6 There's two ways he would be prejudiced:

7 Either he physically couldn't return to work --

8 THE COURT: We're talking here about whether you would  
9 have fired him because of after-learned information.

10 Now, if you show that your after-learned information  
11 had in the past been sufficient to fire some other similarly  
12 situated employee, then it would be relevant.

13 Otherwise, to me, under Seventh Circuit case law, it's  
14 not relevant.

15 So the motion is granted unless you can establish  
16 after similar situated people.

17 I haven't gone in great detail of what your witnesses  
18 are. But if you can, then you could bring that in; if you  
19 can't, then you can't.

20 Now, the next one, bar evidence of plaintiff's arrest  
21 and suspicion of driving on intoxicating medicine.

22 Any objection to that?

23 MR. HAYES: Yes, your Honor. We believe, again, it  
24 goes to his truthfulness. It's not the actual arrest, though  
25 that was related to the narcotics. It's his failure to tell us



1 what was going on. He repeatedly lied to his employer.

2 THE COURT: I'm going to grant that. It seems to me  
3 that the arrest is inadmissible as impeachment, unless  
4 conviction -- or unless the bad act itself reflects honesty --  
5 or dishonesty. And I don't think driving while intoxicated  
6 does that.

7 Now, whether or not he should have told you is another  
8 matter. But, anyway, he wasn't convicted. The charges were  
9 dropped, as I understand it.

10 So that's granted.

11 MR. HAYES: Well, your Honor, can I just ask for  
12 clarification?

13 If our witness testifies that Darren told him or her a  
14 different story about what happened and then related that to  
15 the employer, can we revisit that issue?

16 THE COURT: No, I don't think so because that's --  
17 you're creating a strawman then. That's something that ...

18 Let's see, plaintiff's motion five, to bar or limit  
19 the testimony of Angela Giacchetti.

20 MR. HAYES: Again, your Honor, obviously we object.  
21 Miss Giacchetti was his roommate. We don't intend to have her  
22 testify about any medical opinions or anything, just her  
23 observations of his behavior, his repeated misrepresentations  
24 of where he was, which is a reason we would have terminated his  
25 employment had we known, that we didn't discover until after

1 the discovery in some parts of this case.

2 She's one of our witnesses that's going to talk about  
3 when Darren would tell people that he was somewhere when he was  
4 not there, using his cell phone to pretend he was in one  
5 location when he was in other locations.

6 She also has direct evidence about his medical  
7 condition, and, again, both disregarding his doctor's advice,  
8 not following up with his doctor's advice, which caused his  
9 condition to be, as his doctor put it, his own fault for  
10 self-medicating, which would have alleviated this entire  
11 situation.

12 THE COURT: Well -- go ahead.

13 MR. CAFFARELLI: On those two issues, on the  
14 medication, I mean, she's not his doctor. She doesn't know  
15 what medicines were prescribed to Darren.

16 THE COURT: Well, I agree with that. I'm not going to  
17 let her testify as to anything related to medical.

18 Now, if he -- if she can testify that he wasn't --  
19 that he was taking sick days or not showing up to work and it  
20 was obvious that he was doing other things, like mowing the  
21 lawn and stuff like that, then that might be relevant. But I'm  
22 not going to let her testify that he didn't take his medicine  
23 or took too much medicine or anything like that.

24 MR. CAFFARELLI: Or his medical condition. He suffers  
25 from bipolar.

1           THE COURT: Yeah, medical condition. She's not a  
2 doctor, so she can't testify to that.

3           Number six, to bar the testimony of Alicia Gabriel.

4           MR. HAYES: Again, we object, Your Honor.

5           Miss Gabriel is an employee of United Airlines.

6 Miss Gabriel is the one who related to us that Mr. Cuff was  
7 having a sexual relationship with a direct subordinate.

8           THE COURT: I mean, how does she know that? Did she  
9 witness --

10          MR. HAYES: He told her. Her testimony will be that  
11 he told her.

12          And it's directly -- I mean, that's how we found out  
13 about it.

14          Without her testimony, the jury will be misled into  
15 believing that we were somehow trying to persecute Mr. Cuff,  
16 that somebody was out to get him right in the time when all  
17 this FMLA, when, in fact, it was an employee of a company,  
18 another company, that came forward after this and said, hey, by  
19 the way, he's doing this bad thing that triggered us to start  
20 investigating it, not any anti-FMLA animus.

21          Not allowing this evidence would be highly prejudicial  
22 as it's going to leave the jury with the belief that we were  
23 out to get him.

24          And this evidence clearly shows that we were advised  
25 by a third party of his behavior.

1           MR. MANEWITH: Your Honor, how they found out is --  
2       it's just not relevant. It's a matter of they're trying to  
3       argue -- making it into a side show. Whether or not he was  
4       truthful or not truthful in this investigation, while we  
5       question the relevancy, we haven't filed a motion, but the  
6       start and how it was initiated, it just doesn't go to this  
7       case.

8           (Counsel conferring.)

9           THE COURT: Do you have comparables to show that  
10      subordinate -- other -- other employees were fired for having  
11      relationship with subordinates?

12           MR. HAYES: Yes, your Honor.

13           MR. MANEWITH: Your Honor --

14           MR. HAYES: For purposes --

15           THE COURT: Where is the source of the evidence of  
16      this relationship? From the plaintiff?

17           MR. HAYES: From -- of the plaintiff and the other  
18      party. Mr. Aniballi is on our witness list. And he'll  
19      testify, as he did in his deposition, about their prior sexual  
20      relationship.

21           MR. CAFFARELLI: But the comparables, your Honor, they  
22      did not have a sexual relationship. They had a one-night stand  
23      years before Mr. Aniballi ever worked at the company.

24           I don't think there's going to be any comparable where  
25      the company terminated somebody because they had a one-night

1 stand with somebody who wasn't even an employee.

2 THE COURT: Was this a one-night stand or what?

3 MR. CAFFARELLI: This is a one-night stand.

4 MR. MANEWITH: Which is what Mr. Aniballi alleges.

5 MR. CAFFARELLI: And Mr. Aniballi will testify that  
6 this was a one-night stand that happened years before he even  
7 became an employee. This isn't a matter of him having a sexual  
8 relationship --

9 THE COURT: Wait a minute. This relationship occurred  
10 while --

11 MR. MANEWITH: Before Mr. Aniballi was even an  
12 employee, so he wasn't even a subordinate at the time. And he  
13 will testify --

14 THE COURT: If that's the case --

15 MR. HAYES: Well, I don't think the evidence is that  
16 it was years before. It was some time period --

17 THE COURT: Well, if he wasn't -- I mean, he had to be  
18 a subordinate at the time he had the -- like Clinton and  
19 Monica.

20 (Laughter.)

21 MR. HAYES: Your Honor, I appreciate that. The  
22 problem, though, again, it goes to our after-acquired evidence.

23 THE COURT: No.

24 MR. HAYES: Mr. Cuff hired Mr. Aniballi and  
25 misrepresented to us, we believe because of that sexual

1 relationship, his qualifications. He didn't meet the minimum  
2 qualifications for the job.

3 THE COURT: I'm granting that.

4 Plaintiff -- let's see, bar evidence plaintiff was not  
5 terminated or that he should have come in to work on  
6 January 11th.

7 MR. CAFFARELLI: That's the last one. Right.

8 THE COURT: Yeah.

9 MR. CAFFARELLI: I mean, the basis of that motion is  
10 because there appeared to have been an argument that Mr. Cuff  
11 wasn't terminated or he should have made more efforts to come  
12 in. And that argument we believe is contrary to the FMLA that  
13 he should have, you know, notwithstanding his rights under the  
14 law, should have made some additional effort to come in that he  
15 didn't make. And so we're just seeking to bar any evidence or  
16 inference that he didn't do enough under the FMLA because the  
17 Court has already looked at the FMLA and ruled on that.

18 MR. HAYES: Well, your Honor, again, it goes to the  
19 prejudice issue against us on damages.

20 Mr. Cuff was denied FMLA at the time, long before this  
21 Court made the ruling that we were mistaken about that.

22 He was instructed to come to work on the 11th. We had  
23 given him time off -- not FMLA, just time off -- and told him  
24 he had to come back on the 11th. He wouldn't even return our  
25 calls, so the company had no choice but to terminate him.

1           THE COURT: I thought I saw an e-mail in there that  
2 said that I can't do it on that particular day without -- but  
3 I'll --

4           MR. HAYES: That's true. There's another e-mail where  
5 he says he thought he was terminated on the 4th, so just send  
6 me my final paycheck, why should I even come in.

7           Again, we think it prejudices our damages case if we  
8 can't explain to the jury that he wouldn't come in and even  
9 talk to us about the situation. He had already started his  
10 litigation process.

11           MR. CAFFARELLI: Well, you know, we disagree because  
12 it was clear from the company's e-mails that they weren't going  
13 to give him the FMLA he requested. He requested four weeks.  
14 And what they wanted to talk about --

15           THE COURT: All right. I think it's probably  
16 admissible on good faith but not -- so I'll overrule the  
17 objection on that. But limit it to good faith -- or good faith  
18 in denying him the care.

19           Now, as far as a statement of the case, I like to read  
20 a statement of the case to the jury. I've sort of fashioned  
21 one. Let me read it to you.

22           The case involves the Federal Family and Medical Leave  
23 Act.

24           Plaintiff requested benefits, which were denied by  
25 defendant, contending -- who contended that the Act didn't

1       apply to it.

2               The Court has ruled that the Act did apply to  
3       defendant and that plaintiff was unlawfully denied leave.

4               Plaintiff requests damages as a result of lost wages.

5               Defendant contends that plaintiff did not intend to  
6       return from leave and that subsequently-obtained information  
7       shows that they would have discharged plaintiff for cause.

8               MR. HAYES: No objection.

9               THE COURT: Is that all right for both sides?

10              MR. CAFFARELLI: Sounds right to me.

11              THE COURT: All right. I'll explain to the jury that  
12       this is my interpretation and it's not binding on either side,  
13       just for purposes of jury selection.

14              MR. CAFFARELLI: Your Honor, actually -- well, this  
15       may have more to do with jury selection, but Mr. Cuff is gay,  
16       and I do have a concern that somebody might not like that or  
17       might be prejudiced against somebody because of their sexual  
18       orientation.

19              I just want to make sure that to the extent you go  
20       into voir dire that that issue is covered so that anybody might  
21       have --

22              THE COURT: I thought that I excluded -- how is it  
23       going to come up that he's gay? I excluded the relationship.

24              MR. CAFFARELLI: Yeah.

25              THE COURT: I granted --



1 MR. CAFFARELLI: If it's not --

2 THE COURT: I mean, I don't really want to go into it  
3 unless ...

4 MR. CAFFARELLI: Yeah. Okay. If --

5 MR. MANEWITH: If it's not going to come in, we don't  
6 need to go into it --

7 MR. HAYES: Your Honor, then I guess that you'd have  
8 to additionally bar any evidence that they would put on about a  
9 conversation or conversations with an employee named Nick Reya  
10 (phonetic).

11 I'm not sure if they're planning on talking about  
12 that, but if they were --

13 THE COURT: Apparently they're not.

14 All right. The voir dire. I'll conduct the voir  
15 dire. And I will give you -- get from them background  
16 information as to their education, employment, age, and so on  
17 and so forth, children, spouse's employment.

18 And whether they've ever applied for leave under  
19 Federal Family Medical Leave Act or any other provision such as  
20 the Leave Act, like under a union contract and so forth,  
21 whether they were ever denied leave, and whether they ever  
22 supervised other employees where they would -- where they  
23 supervised employees, and if they ever were called upon to  
24 consider either granting or denying leave.

25 Then I'll find out whether they've been on jury duty

1 before, whether they've been involved in lawsuits before, and  
2 whether they're familiar with any of the parties, whether they  
3 will follow the law, any reason they couldn't be fair.

4 Anything else you want covered?

5 MR. HAYES: Your Honor, I'd request that the Court ask  
6 them if they've ever sued a commercial airline before.

7 THE COURT: I was going to ask them if they've ever  
8 been involved in a lawsuit.

9 MR. HAYES: Any lawsuit.

10 THE COURT: That will cover, presumably, whether they  
11 ever sued an airline. I would doubt that they have.

12 Usually what happens is you'll find out that when they  
13 were a kid, they were in an accident and a claim was made and  
14 was resolved and so forth.

15 MR. HAYES: No, obviously that would be fine.

16 THE COURT: Anything else?

17 MR. CAFFARELLI: I just want to be clear, your Honor,  
18 because I don't want to overstep our bounds because, you know,  
19 having prepared for the assumption that everything is coming  
20 in, we need to do some quick adjustments here.

21 On the -- in the opening, as to the direct testimony,  
22 I think it would be appropriate to tell the jury -- to give  
23 them some background that he had been diagnosed with Crohn's  
24 disease and bipolar. That was the reason for the FMLA. And  
25 that's pretty much all we intended to do. Crohn's disease,

1 this is what Crohn's disease is. Bipolar, this is what bipolar  
2 is. He had been approved for the FMLA. But we weren't  
3 intending to go into major detail into, you know, how that  
4 affects him on a day-to-day basis or any of that stuff. It was  
5 just describe the conditions as background.

6 I don't want to then open the door for an argument  
7 that because we discussed the conditions, the fact that he had  
8 these conditions, that somehow now all the medical records  
9 become relevant.

10 I'm happy not to discuss the conditions and just say,  
11 look, this is an FMLA case and you don't need to worry about  
12 what he had. The point is he had it.

13 But it's hard -- it's hard -- I guess we need to  
14 revisit all the exhibits because some of the exhibits do  
15 reference that.

16 They're not the medical records. We sought to exclude  
17 the medical records and the medical arguments.

18 But I just wanted the Court's perspective on maybe  
19 just raising the fact that he had these conditions without --  
20 without opening the door to then bringing the medical  
21 conditions into question during the trial.

22 MR. HAYES: Well, your Honor, I guess, you know --

23 THE COURT: Let me ask -- let me ask this:

24 It's my understanding they denied him medical leave  
25 because defense didn't believe that -- that they -- that it

1 applied to them.

2 MR. HAYES: Correct.

3 MR. CAFFARELLI: Right.

4 THE COURT: Not that he didn't deserve it if it did  
5 apply to them.

6 MR. HAYES: That's correct, Your Honor.

7 But my understanding is plaintiff's argument is that  
8 we can't argue any of the medical issues of whether or not he  
9 was eligible or helping or doing any of the things related to  
10 the medical because we didn't ask it at the time.

11 But at the time, we couldn't have asked it. We told  
12 him he was not eligible because there weren't enough employees  
13 within 75 miles of Chicago, so we never went to the  
14 pre-certification phase.

15 So it would be prejudicial if we have no ability to  
16 discuss that now.

17 I mean, we're going to call his doctor.

18 THE COURT: Well, I think he can testify without -- I  
19 mean, he -- just saying that he had symptoms and so forth that  
20 made it very difficult for him to work so he needed time off,  
21 and without going into detail as to specifically what was wrong  
22 with him.

23 MR. CAFFARELLI: Okay. Well, my other concern is if  
24 somebody -- if some -- you know -- well, so you're saying that  
25 he would just describe he had a medical condition and he needed

1 to be out. My concern is the jury is going to start to  
2 speculate that he had HIV or something that also might  
3 prejudice them, which he doesn't.

4 MR. HAYES: Then they're free to have him discuss his  
5 medical condition. If he thinks it will bring up prejudice,  
6 they should explain to the jury that that's not what he has.

7 THE COURT: I guess to the extent that -- one of my  
8 colleagues has Crohn's disease, so I have some modicum of  
9 understanding of what it is and what was -- his other problem  
10 is?

11 MR. CAFFARELLI: Bipolar.

12 THE COURT: Bipolar.

13 MR. CAFFARELLI: And so the only thing we were going  
14 to do is --

15 THE COURT: I think those are probably common enough  
16 terms that he can testify that this is what I have, and then  
17 say that his symptoms were overwhelming him or whatever.

18 I'm not going to tell you how to try the case, but,  
19 you know, as of right now, his doctor is going to testify for  
20 the defense, correct? Is that your intention?

21 MR. CAFFARELLI: I guess they intend --

22 MR. HAYES: He's on both of our lists. They object to  
23 us calling him, but they have him on their list.

24 MR. CAFFARELLI: We have him as a "may call" and we  
25 did not intend --

1           THE COURT: It might be the easiest thing for you to  
2 call him.

3           MR. CAFFARELLI: Well, we didn't intend to call him  
4 because I don't know what he would testify to, other than going  
5 into --

6           THE COURT: All right. Well, again, I'm not going to  
7 tell you how to try the case.

8           I would say that your guy should be competent to  
9 testify why he felt he needed leave, and he went to them and  
10 they said you're not going to get it because the law doesn't  
11 apply to us, or whatever they told him. And because I needed  
12 the leave, I took it anyway. And then they can bring out that  
13 he contacted a lawyer and the lawyer told him, yeah, you're  
14 entitled to it or whatever, and so he took the leave with the  
15 results that they terminated him or whatever, you know, the  
16 evidence will show. And then that's about all I can tell you.

17          MR. CAFFARELLI: But -- okay. But then just to be  
18 clear, on motion in limine two and three, the medical and the  
19 narcotics, that we're not talking about the narcotic --

20          THE COURT: Narcotics is definitely out. Sexual  
21 history is out. I don't see where that's particularly  
22 relevant. I don't think it has any connection to Crohn's  
23 disease or bipolar illness.

24          MR. HAYES: Well, your Honor, the only thing I would  
25 say about that is --

1           THE COURT: Now, if his doctor would say that he was  
2 never able to return to work, then -- I mean, I don't know what  
3 he's going to testify to, but if he would say he could never  
4 return to work, then that would probably -- might -- that would  
5 be a defense, I suppose. I don't know what his doctor would  
6 say.

7           MR. CAFFARELLI: What the doctor is going the testify  
8 to is he didn't always follow my instructions. I would tell  
9 him to take this medication. And sometimes he would take it,  
10 sometimes he wouldn't. And he could have been a better  
11 patient, essentially. But not that he wasn't able to return to  
12 work.

13           MR. HAYES: We think that's very relevant, your Honor.  
14           The jury, who is going to be deciding damages against  
15 us, should know that Darren didn't follow his doctor's  
16 instructions. It would have got him back to work --

17           THE COURT: How many people actually always do to a  
18 tee? We would all floss every night if we followed  
19 instructions.

20           I had a juror tell me that once. I said one of the  
21 questions was -- I forget what the issue was, but have you ever  
22 disregarded a medical provider's instructions? He said, yeah,  
23 I don't floss every night.

24           So, I mean, there's, you know, there's a de minimus  
25 aspect, too. I mean, I don't know what -- you've deposed him

1 or you've talked to him, I haven't. Anyway, that's about the  
2 best I can do with it before the trial.

3 MR. HAYES: Very good, your Honor. Thank you.

4 THE COURT: We're going to get the jury.

5 By the way, I probably didn't go over this.

6 We'll pick seven jurors. This case will take, what,  
7 two to three days?

8 MR. HAYES: Yes.

9 MR. MANEWITH: Yes.

10 THE COURT: Yeah. So you will get -- each side gets  
11 three peremptories.

12 MR. HAYES: Your Honor, if I could, I'd like to  
13 revisit that issue.

14 Under 47(b), we have four defendants in this case, and  
15 I would request six --

16 THE COURT: I think they're fungible, aren't they?

17 MR. HAYES: Well, the comments to the rules talk about  
18 each defendant getting three. And then at the Court's  
19 discretion, there's a consolidation.

20 Our request for six peremptory challenges is three in  
21 total for the three corporate defendants and three for  
22 Mr. Trowbridge, the individual defendant.

23 THE COURT: I'm limiting each side to three. Period.

24 MR. HAYES: Thank you, your Honor.

25 THE COURT: And you'll exercise them, unless you



1 decide you want to do it differently -- and for 26 years I've  
2 done it this way -- that you exercise them in writing, give  
3 them to me, and I will exclude the juror without attribution.

4 And if you -- since you're going to do it  
5 simultaneously -- and if you don't -- for example, if the seven  
6 jurors you have no -- let me start out -- here's how I'll do  
7 it:

8 I'll put seven jurors in the box. There's seven seats  
9 in the front row. I'll question them all. And then I'll say,  
10 okay, give me your choices.

11 Now, if you wanted to excuse someone for cause, then  
12 we'll have a sidebar.

13 To exercise your peremptories, you'll write down on a  
14 piece of paper, plaintiff strikes Juror Number 3, defense will  
15 write strike 6 and 7 or whatever it is.

16 You'll give them to me. And then I will say jurors 3,  
17 6, and 7 are removed. Replace them.

18 But one thing you should be aware of, I will swear in  
19 those who aren't challenged. I don't permit back-strikes.

20 So, like I said, we'll have seven, plaintiff strikes  
21 3, defendant 6 and 7. At that point you both -- if plaintiff  
22 exercises one of their three and defense two of the three, we  
23 replace those three, and then go through the same process.

24 And in the event you both strike the same juror, which  
25 is a possibility, the first time that happens, it's chargeable

1 to the plaintiff. The second time, it's chargeable to the  
2 defendant.

3 Example, plaintiff strikes Jurors 1 and 2. Defense 2  
4 and 3.

5 At that point, plaintiff has exercised two  
6 peremptories of his three, and defense has exercised one. So  
7 we replace those three. You both strike replacement Juror  
8 Number 1. Now, at that point, defendant has exercised two and  
9 plaintiff two.

10 MR. HAYES: Understood.

11 THE COURT: And then if it happens again, the next  
12 time, it's -- and if you don't have -- if you're satisfied with  
13 all the jurors and don't wish to exercise a peremptory, don't  
14 stand up and say they're all fine. Write down on a piece of  
15 paper zero strikes or no -- we accept or whatever, so that you  
16 don't leave -- the purpose is -- or one of the purposes is so  
17 that the strikes are done without -- so that the jurors don't  
18 know who struck them.

19 MR. CAFFARELLI: So we should both bring you a paper  
20 even if we have no strikes?

21 THE COURT: Right. Write down none or, you know,  
22 Juror 1, Juror 2.

23 MR. HAYES: Just to be clear when you say back-scratch  
24 (sic.) -- we strike one each from the first seven panel or five  
25 remaining -- you swear those five in --

1 THE COURT: I swear those five in.

2 MR. HAYES: -- those are done. We have --

3 THE COURT: They're done. They're part of the jury.

4 So then we replace the other two.

5 MR. HAYES: Thank you.

6 THE COURT: That's the way I've done it now for 26  
7 years.

8 MR. HAYES: No objection.

9 THE COURT: I'm open to suggestions.

10 MR. HAYES: No, sir, that's fine. I just wanted to  
11 make sure I understood.

12 THE COURT: Yeah. So without anything else, I'll send  
13 Miss Parker down to get the jurors, and we will start -- we'll  
14 pick the jury.

15 Usually it shouldn't take more than a half hour or 40  
16 minutes. Then we'll have opening statements probably this  
17 morning, and then start evidence this afternoon.

18 MR. CAFFARELLI: Jury instruction conference is after  
19 the evidence --

20 THE COURT: Pardon?

21 MR. CAFFARELLI: The jury instruction conference is  
22 after the evidence has come in?

23 THE COURT: Well, what we'll probably do is have them  
24 tomorrow night after court. Unless you figure you might finish  
25 tomorrow, and then we might have it tonight. But -- I have

1 a -- when I have a jury instruction conference, the way I do it  
2 is, unless there's objection -- and, again, I've never had an  
3 objection, but it doesn't mean I wouldn't entertain one -- is I  
4 have actually two conferences:

5 One informal one in chambers in which we go over all  
6 the instructions and I give an indication how I intend to rule;  
7 and then the next available time -- I don't have the court  
8 reporter back there.

9 The next available time, we go on record, and then I  
10 go through exactly what we talked about and I decided in  
11 chambers, and then you can put on record whatever objections  
12 you have.

13 MR. MANEWITH: Your Honor, do you instruct the jury  
14 before or after closings?

15 THE COURT: Before -- no, after closing -- last thing  
16 they get is the instructions.

17 MR. MANEWITH: Okay.

18 MR. HAYES: Very good.

19 THE COURT: So plaintiff will give final argument,  
20 defense final argument, plaintiff rebuttal, my instructions,  
21 swear in the bailiff, and out they go.

22 MR. MANEWITH: Okay.

23 MR. HAYES: Very good.

24 THE COURT: Any questions?

25 MR. CAFFARELLI: No.

1 MR. HAYES: No, your Honor.

2 THE COURT: All right.

3 (Recess taken from 10:34 a.m. until 10:43 a.m.)

4 (The voir dire panel enters the courtroom.)

5 THE CLERK: All rise.

6 (Judge Leinenweber enters the courtroom.)

7 THE COURT: Good morning, Ladies and Gentlemen.

8 You've been called here to participate in jury  
9 selection in a case entitled Darren Cuff, plaintiff, versus  
10 Trans States Holdings, Inc., Trans States Airlines, GoJet  
11 Airlines, and Ed Trowbridge, individually, defendants.

12 The plaintiff is in court in person and through his  
13 counsel -- is it Mr. Caffarelli? Would you introduce the  
14 people at your table, please?

15 MR. CAFFARELLI: Sure.

16 My name is Alex Caffarelli. And with me is Bradley  
17 Manewith, my associate. Darren Cuff, plaintiff. And Dave  
18 Zehner also.

19 THE COURT: The defendants are in court with Mr. David  
20 Hayes, their counsel.

21 Would you introduce the people at your table, please?

22 MR. HAYES: Yes, your Honor.

23 Good morning. My name is David Hayes, and I represent  
24 the corporate defendants and Mr. Eddie Trowbridge here at the  
25 table. Mr. Terry Basham is the corporate representative for

1 the three defendants. Leslie Cavender and Allison Schultz are  
2 both lawyers in my office.

3 Thank you.

4 THE COURT: All right. The other -- my name is Judge  
5 Harry Leinenweber. I'm the judge assigned this case.

6 The lady on my left, your right, is Miss Gayle  
7 McGuigan. She's the official court reporter, takes down  
8 everything that's said.

9 And the lady on my right is Miss Wanda Parker, who is  
10 the deputy clerk assigned to this courtroom.

11 Now, I'm going to give you a very brief statement of  
12 what this case is about. And it's my interpretation that the  
13 case is about, and it's not binding on either party.

14 I kind of pieced this together, but I think it will  
15 give you an idea of what the case is about and it will make --  
16 when we have jury selection, it will make a little more sense  
17 what my questions are.

18 This case involves the Federal Family and Medical  
19 Leave Act. And that's why the case is here in federal court  
20 because it's a federal law that's involved in this case.

21 The plaintiff requested benefits of this Act, which  
22 were denied by the defendant.

23 The defendant was -- denied because it contended that  
24 the Act did not apply to it.

25 The Court, myself, has ruled that the Act does apply

1 to the defendant and that plaintiff was unlawfully denied  
2 leave.

3 Plaintiff requests damages as a result of lost wages.

4 The defendant contends that plaintiff did not intend  
5 to return from leave and subsequently-obtained information  
6 shows that it would have discharged the plaintiff for cause.  
7 Therefore, he is not entitled to damages or to the damages to  
8 the extent claimed.

9 So that's the issues in the case, from my  
10 interpretation.

11 And, again, I want to emphasize that it's not binding  
12 on either side to contradict some of my interpretation of what  
13 the case is about.

14 Now, one of the things that potential jurors are all  
15 concerned about is how long are we going to be tied up. And we  
16 anticipate this case should take no more than three days. And  
17 I can -- at the outside, it will be finished this week. So  
18 that if you're selected as a juror in this case, you will be  
19 required to be present each day that we sit, today, tomorrow,  
20 Wednesday, and possibly on Thursday, but I wouldn't anticipate  
21 going that far.

22 So the Court will sit approximately from 10:00 o'clock  
23 in the morning until 5:00. We take an hour off for lunch,  
24 usually between 12:30 and 1:30. And then we have a short  
25 recess in both the morning and a short recess in the afternoon.

1           I pledge to you, to the extent that I can do so, I  
2 will attempt to make sure that all of the time you're supposed  
3 to be here in court that you will, in fact, be in here in court  
4 listening to testimony and arguments, hearing the case, rather  
5 than sitting, waiting for things to happen.

6           So I will pledge to you to do my absolute utmost to  
7 make sure that this case, consistent with justice, proceeds as  
8 rapidly as possible.

9           So would you all rise and be sworn?

10          (The voir dire panel was sworn.)

11          THE COURT: Please be seated.

12          A couple questions about what's going to happen next.  
13 For those of you who have not participated in jury selection,  
14 some of you will be called -- we're going to pick a jury of  
15 seven, seven of you.

16          And in order to determine your fitness for trial, and  
17 I mean fitness to the extent sometimes people know something  
18 about the case or they know one of the participants or they've  
19 had a very bad experience which would prevent them, for  
20 example, doing justice to one side or the other. Such a person  
21 can be excused for cause.

22          In addition, under federal law, each side is entitled  
23 to request that a certain number of jurors be stricken or not  
24 included in the jury without having to justify to me why they  
25 don't want them. That's what's called a peremptory challenge.



1           In order for them to exercise their rights under  
2 federal law, they have to know a little bit something about  
3 you.

4           Consequently, it's incumbent upon me to ask a few  
5 questions of you, which is I guess sort of an invasion of your  
6 privacy. But having said that, I don't want to scare you  
7 because basically we're going to ask you a little bit of your  
8 background, your education, where you work, and that sort of  
9 thing, and your experience, for example, as to if you've ever  
10 applied for Family Leave and things of that nature. So it's  
11 not going to be very invasive, so I didn't want to scare you in  
12 advance. We're not going to conduct an in-depth  
13 cross-examination of each and every one of you, so I don't want  
14 you to worry about it. But I will have to ask you a few  
15 questions, and I hope you'll put up with it.

16           Anything else, Wanda?

17           THE CLERK: I think you've covered everything.

18           THE COURT: Okay. We're going to call seven of you.  
19 And there's seven seats in the front row.

20           The first name called, please take the seat closest to  
21 me. The second name called, the next seat, three, four, five,  
22 six, seven.

23           THE CLERK: Martin Mueller.

24           Carolyn Steckbeck.

25           Patrick Quinnett.

1 Latonya Nelson.

2 So it should be Mueller, Steckbeck, Quinnett, and  
3 Nelson.

4 Nichole Hoehn.

5 Brian Grant.

6 And Holly Cammack.

7 THE COURT: Before I start asking questions, a couple  
8 of ground rules:

9 One is that everything that's said is taken down by  
10 the court reporter, so it's necessary for you to verbalize your  
11 answer. You can't go "ah-ha" or shrug your shoulders or nod or  
12 things of that nature.

13 So I need an actual word from you and answer, whether  
14 it's "yes" or "no" or whatever. "Ah-ha" and "huh-uh" sound an  
15 awful lot alike so -- they read an awful lot alike, so if  
16 you're trying to figure out what was said -- so it's absolutely  
17 necessary that you verbalize your answers.

18 EXAMINATION

19 OF PROSPECTIVE JUROR MARTIN MUELLER:

20 BY THE COURT:

21 Q So the first gentleman is -- it's Martin Mueller; is that  
22 correct, sir?

23 A Yes, it is.

24 Q Where do you live?

25 A Antioch, Illinois.

1 Q How old are you?

2 A 57.

3 Q What's your educational background?

4 A High school and a little bit of college.

5 Q All right. What's your employment, sir?

6 A I'm a printer at a bag manufacturing company.

7 Q Are you married?

8 A Yes.

9 Q Is your spouse employed?

10 A Yes.

11 Q What does she do?

12 A She's a housekeeper at a Kenosha hospital.

13 Q Do you have children who are employed?

14 A Yes, I have a daughter. She's employed. She's a nurse in  
15 Tampa Hospital in Florida.

16 Q Okay. Have you or any of your immediate family ever  
17 applied for leave under the Federal Leave Act or any other  
18 leave provision, for example, in a union contract?

19 A Never have.

20 Q Have you ever -- any of that group, your immediate family,  
21 ever been denied leave?

22 A No.

23 Q Okay. Do you supervise other employees?

24 A No.

25 Q Okay. Have you ever supervised employees?

1 A No.

2 Q Okay. So you've never been in a position where you either  
3 were in a position to grant or deny someone else leave?

4 A No, I haven't.

5 Q Okay. Have you been on jury duty before?

6 A I was in county jury duty about two years ago.

7 Q Did you hear a case?

8 A Would be in Lake -- no, I never got on a case.

9 Q Okay. Have you ever been involved in a lawsuit? I'll  
10 explain what I mean by "involved." There's numerous ways you  
11 can be involved.

12 If you file a lawsuit, like Mr. Cuff, you're the  
13 plaintiff. If you're a defendant in a lawsuit, like  
14 Mr. Trowbridge, you're being sued.

15 You can also be involved in a lawsuit by participating  
16 as a witness, things of that -- have you ever been --

17 A No.

18 Q -- involved in a lawsuit?

19 A Never have.

20 Q All right. Are you familiar with any of the parties in  
21 this lawsuit?

22 A No, I'm not.

23 Q Will you follow the law as I state it, even if you don't  
24 agree with it?

25 A Yes.

1 Q Any reason you couldn't be a fair and impartial juror?

2 A I feel there's no reason I could not.

3 Q Thank you.

4 EXAMINATION

5 OF PROSPECTIVE JUROR CAROLYN STECKBECK:

6 BY THE COURT:

7 Q The next lady is Carolyn Steckbeck?

8 A Yes.

9 Q Did I pronounce it right?

10 A Yes.

11 Q Where do you live?

12 A Chicago.

13 Q And how old are you?

14 A 24.

15 Q What's your educational background?

16 A Bachelor's degree.

17 Q In what?

18 A Communications.

19 Q Speak up a little.

20 A Communications.

21 Q And what is your employment?

22 A I work in advertising.

23 Q Are you married?

24 A No.

25 Q Okay. Have you ever applied for leave under the Federal

1 Family Medical Leave Act or any other provision, for example,  
2 of a union contract?

3 A No.

4 Q And I take it -- how about any of your very close family,  
5 do you know have they ever applied for leave?

6 A No.

7 Q So no one has ever been denied leave either then, correct?

8 A Correct.

9 Q Do you supervise other employees?

10 A No.

11 Q So you've never been in a position to either grant or deny  
12 leave to someone else?

13 A Correct.

14 Q Have you been on jury duty before?

15 A No.

16 Q Have you ever been involved in a lawsuit in any of the ways  
17 I mentioned to Mr. Mueller?

18 A No.

19 Q Are you familiar with any of the parties to this lawsuit?

20 A No.

21 Q Will you follow the law as I state it, even if you don't  
22 agree with it?

23 A Yes.

24 Q Any reason you couldn't be fair?

25 A No.

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EXAMINATION

OF PROSPECTIVE JUROR PATRICK QUINNETT:

BY THE COURT:

Q The next gentleman is Patrick Quinnett?

A Yes.

Q Did I pronounce it right?

A Yes, you did.

Q Where do you live?

A Elk Grove Village.

Q How old are you?

A I'm 63.

Q What's your educational background?

A I have a Bachelor's degree in mathematics.

Q And what's your occupation or business?

A I am currently a security manager. Building security manager.

Q What type of business or facility are you --

A I'm Union Station building. Secure -- management of security.

Q Are you married?

A Yes.

Q Is your spouse employed?

A Yes, she is.

Q What does she do?

A She's an account rep. for Market Day.

1 Q Do you have children who are employed?

2 A Yes, I do.

3 Q Would you tell what they do?

4 A My son works for McMaster-Carr, stocking. And my daughter  
5 works with autistic children.

6 Q Okay. Have you or any of the group you've just talked  
7 about ever applied for leave under either the Federal Family  
8 and Medical Leave Act or any provision such is provided in a  
9 union agreement?

10 A My family hasn't, no.

11 Q And I take it, therefore, no one has ever been denied  
12 leave?

13 A Not in my family, no.

14 Q Do you supervise other employees?

15 A I don't now, but I did for 30 years.

16 Q All right. Now, did you -- were you ever in a position  
17 where you were in a position to influence the granting or  
18 denying leave under Federal Leave Act or any other provision?

19 A Yes.

20 Q And what -- tell us a little bit.

21 A Different -- different people over the -- over the years.  
22 I was at two banks in a small corporation. Different people at  
23 different times had applied for it. So you sit down with the  
24 Human Resources and go through what's going to happen, how it's  
25 going to happen.



1 Q Okay. Occasionally were people denied?

2 A I would say rarely. Maybe one out of maybe the ten.

3 Q Okay. Did any litigation or anything result from that?

4 A No. Not that I know of.

5 Q Have you been on jury duty before?

6 A Yes.

7 Q When and where?

8 A I've been -- I've been called many times, but I've been on  
9 one case many, many, many years ago.

10 Q Where was the case and what -- just tell us what kind.

11 A It had to do with a break-in. It was I think at 22nd.

12 Q That would be a criminal proceeding?

13 A Correct.

14 Q Okay. You actually decided the case?

15 A Yes, we did.

16 Q Have you ever personally been involved in a lawsuit of any  
17 type?

18 A No, I have not.

19 Q Are you familiar with any of the parties or the lawyers  
20 here?

21 A I am not.

22 Q Okay. Will you follow the law as I state it, even if you  
23 don't agree with it?

24 A I will.

25 Q Any reason you couldn't be a fair and impartial juror in

1 this case?

2 A No.

3 EXAMINATION

4 OF PROSPECTIVE JUROR LATONYA NICOLE NELSON:

5 BY THE COURT:

6 Q The next lady is Latonya Nicole Nelson, correct?

7 A Morning. Yes.

8 Q Where do you live?

9 A Chicago, Illinois.

10 Q Okay. How old are you?

11 A I'm 41.

12 Q What's your educational background?

13 A High school and some college.

14 Q Okay. And what's your employment?

15 A Right now I am unemployed, but in the process of getting  
16 back into sales. I'm a licensed realtor and insurance agent.

17 Q Okay. So you have in the past been -- sold real estate and  
18 insurance?

19 A Yes.

20 Q Okay. And you hope to get back into that, is that --

21 A Yes.

22 Q Are you married?

23 A Yes, I am.

24 Q Is your spouse employed?

25 A He's self-employed.

1 Q What does he do?

2 A He's an HVAC technician.

3 Q Okay. Do you have children who are employed?

4 A No, my children are in school.

5 Q Okay. Have you or any of your immediate family ever  
6 applied for leave under either the Federal Family and Medical  
7 Leave Act or any other provision such as leave provided under a  
8 union agreement?

9 A We've never applied; however, I had a sickly daughter when  
10 I was working some years ago, so I have gone through the  
11 application process to, I guess, qualify for it in the event it  
12 did happen.

13 Q Okay. But you never actually completed the application?

14 A No. I've never --

15 Q So you weren't denied leave.

16 A No.

17 Q You just never followed through.

18 A (Indicating.)

19 Q It turned out you didn't need it, is that --

20 A Correct.

21 Q Okay. Is there anything about that experience that you  
22 think would influence you in any way in this case?

23 A No.

24 Q Okay. Do you -- have you or do you currently supervise any  
25 employees?

1 A No.

2 Q Have you ever supervised employees?

3 A No.

4 Q So you've never personally participated in the decision  
5 whether someone else should get leave or not; is that fair?

6 A That's fair.

7 Q Have you been on jury duty before?

8 A First time.

9 Q Okay. Have you ever been involved in a lawsuit yourself?

10 A No.

11 Q Are you familiar with any of the parties or the lawyers?

12 A No.

13 Q Will you follow the law as I state it, even if you don't  
14 agree with it?

15 A Yes.

16 Q Any reason you couldn't be fair?

17 A No.

18 EXAMINATION

19 OF PROSPECTIVE JUROR NICHOLE ANNE HOENE:

20 BY THE COURT:

21 Q The next lady is Nichole Anne --

22 A Hoehn.

23 Q Hoehn?

24 A Yes.

25 Q Miss Hoehn, where do you live?

1 A Chicago.

2 Q And what's your age?

3 A 36.

4 Q What's your educational background?

5 A I have a Bachelor's degree in communications.

6 Q And what's your business or occupation?

7 A Stay-at-home mom.

8 Q When you worked -- I take it you worked at some point?

9 A Yes.

10 Q What did you do when you worked?

11 A I was in advertising.

12 Q All right. What did you do in advertising? What was --

13 A I was called an account person. Like a client service.

14 Q You're married. What does your husband do?

15 A He's self-employed. He's in E commerce. He has an on-line  
16 retail store.

17 Q Okay. Do you have children who are employed? Are they too  
18 young?

19 A She's too young.

20 Q Have you ever applied for leave under either the Federal  
21 Family and Medical Leave Act or any other provision provided  
22 for leave?

23 A Maternity leave.

24 Q Pardon?

25 A Maternity leave.

1 Q Yeah.

2 A Yes.

3 Q Did you ever -- have you ever been denied leave?

4 A No.

5 Q Okay. So you applied for leave and you got it and that  
6 was -- then you went back to work after the --

7 A Yeah.

8 Q Okay. Do you have -- have you or -- ever supervised other  
9 employees?

10 A Yes.

11 Q Have you ever been in a position where you could influence  
12 either the granting or denying leave --

13 A No.

14 Q -- to anybody?

15 So that was not part of your --

16 A No.

17 Q Okay. Have you been on jury duty before?

18 A Yes.

19 Q When and where?

20 A I -- it was in the early 2000s. And I believe it was at  
21 the Daley Center down the street.

22 Q What kind of case did you hear?

23 A It was a personal injury case.

24 Q Somebody was asking for money --

25 A Yes.

1 Q -- as a result of an injury sustained, was it an accident?

2 A Right.

3 Q You actually decided the case?

4 A Yeah.

5 Q Okay. That's the only time you've been a juror?

6 A Yes.

7 Q Have you ever been involved in a lawsuit yourself?

8 A No.

9 Q Are you familiar with any of the parties or the lawyers?

10 A No.

11 Q Will you follow the law as I state it, even if you don't  
12 agree with it?

13 A Yes.

14 Q Any reason you couldn't be fair?

15 A No.

16 EXAMINATION

17 OF PROSPECTIVE JUROR BRIAN GRANT:

18 BY THE COURT:

19 Q Next person is Brian Grant?

20 A Correct.

21 Q Where do you live, sir?

22 A Millbrook, Illinois.

23 Q And how old are you?

24 A 47.

25 Q What's your educational background?

1 A Associate's Degree in electrical engineering.

2 Q And what's your business or occupation?

3 A Computer engineer.

4 Q Are you married?

5 A Yes.

6 Q What does your spouse do?

7 A She's a homemaker.

8 Q Has she worked out of the home on occasion?

9 A Not for a long time.

10 Q Okay. Do you have children who work?

11 A I do.

12 Q What do they do?

13 A Cashier.

14 Q Okay. Have you or any of your family, including your wife,  
15 ever applied for leave under the Federal Family and Medical  
16 Leave Act or any other provision providing for leave?

17 A No.

18 Q I take it no one has ever been denied leave then?

19 A Correct.

20 Q Okay. Do you supervise other employees?

21 A I used to, but not today, no.

22 Q Have you ever been involved in the decision to grant or  
23 deny leave?

24 A No.

25 Q That was a no?



1 A That was a no. Correct.

2 Q Okay. Have you been on jury duty before?

3 A No.

4 Q Have you ever been involved in a lawsuit yourself?

5 A No.

6 Q Are you familiar with any of the parties or the lawyers?

7 A Nope.

8 Q Will you follow the law as I state it, even if you don't  
9 agree with it?

10 A Yes.

11 Q Any reason you couldn't be fair?

12 A No.

13 Q All right.

14 EXAMINATION

15 OF PROSPECTIVE JUROR HOLLY CAMMACK:

16 BY THE COURT:

17 Q Holly Cammack?

18 A Yes.

19 Q Did I pronounce it right?

20 A Yes.

21 Q Where do you live, Miss Cammack?

22 A Tinley Park.

23 Q And how old are you?

24 A 42.

25 Q What's your educational background?

1 A I have a Bachelor's in marketing.

2 Q Just a little louder, please.

3 A A Bachelor's in marketing.

4 Q All right. And what's your employment?

5 A Employed by Santiffee (phonetic) as a sale rep.

6 Q You can take that microphone up. Maybe that -- I think  
7 it -- yeah. And that -- it hooks up to her ear phone so ...  
8 she can hear and I can read what she --

9 A At Santiffee (phonetic) as a sales rep.

10 Q All right. And are you married?

11 A Not that I know of, no. No.

12 Q Have you ever been married?

13 A Yes.

14 Q And when you were, what did your husband do? Or what does  
15 he do?

16 A A contractor.

17 Q Like building contractor?

18 A Yes.

19 Q Do you have any children that are employed?

20 A No.

21 Q Have you or any of your close family ever applied for leave  
22 under either the Federal Family and Medical Leave Act or any  
23 other provision providing for leave?

24 A I have applied for short-term disability.

25 Q And were you granted it?

1 A Yes.

2 Q Did you have any trouble with it at all? Getting it or --

3 A No.

4 Q Have you ever been denied leave?

5 A No.

6 Q Do you supervise other people?

7 A Not currently.

8 Q Have you?

9 A Yes.

10 Q Have you ever participated in -- either in the decision  
11 whether to grant someone else leave --

12 A No.

13 Q -- or deny someone else leave?

14 A No.

15 Q Have you been on jury duty before?

16 A I have not.

17 Q Have you ever been involved in a lawsuit yourself?

18 A I did receive a settlement from a class action lawsuit that  
19 I did not pursue.

20 Q Okay. What was the -- can you describe what the class was?

21 A I don't even know if I can. I just got a notice in the  
22 mail that said if you want to opt out, fill out this paperwork.  
23 If not, you will be receiving a check because the case has  
24 already been settled.

25 Q You got a check?

1 A I did.

2 Q Do you remember what it was for? Was it --

3 A It was the company with -- I currently work with. And I  
4 believe it had something to do with salary versus exempt  
5 employees and causing them to work more than they were supposed  
6 to.

7 Q Okay. Is there anything about that experience that you  
8 were dissatisfied with?

9 A I got money for nothing, so no.

10 Q That's -- nothing wrong with that. It's better than the  
11 alternative.

12 A Yeah.

13 Q You got paid money for no reason.

14 A Absolutely.

15 Q That's your only lawsuit?

16 A As far as -- yeah, as far as I know.

17 Q You never met with a lawyer or anything like that?

18 A Worker's comp. claim.

19 Q You had a worker's comp. claim?

20 A I did.

21 Q And you had a lawyer for that?

22 A It wasn't -- it was settled at -- by arbitration. I didn't  
23 have an attorney.

24 Q Okay. What type of -- I mean, briefly what kind of injury  
25 did you have?

1 A It was a multiple -- multiple state involved vehicle  
2 accident. And I was out of work for 100 days.

3 Q How long ago was that?

4 A I want to say '96.

5 Q Okay. Are you okay now?

6 A I hope so.

7 Q Are you familiar with any of the parties or the lawyers?

8 A I don't believe I am.

9 Q Will you follow the law as I state it, even if you don't  
10 agree with it?

11 A Yes.

12 Q Any reason you couldn't be fair?

13 A No.

14 Q Thank you.

15 THE COURT: Lawyers? Give me your ...

16 (Tendered.)

17 THE COURT: Miss Nelson. Miss Hoehn -- excuse me.

18 Miss Nelson. Mr. Grant. And Mr. -- or Miss Cammack  
19 will be excused.

20 The other four can rise and be sworn, please.

21 THE CLERK: You can go home and call the jury  
22 department tomorrow after 5:00 o'clock. And that goes for  
23 anyone who is excused. If you are excused, just go home and  
24 call the jury department tomorrow after 5:00. Tomorrow.

25 We have Mueller, Steckbeck, Quinnett, and Hoehn.

1 THE COURT: Would you four please rise and be sworn?

2 THE CLERK: Would you raise your right hand?

3 (Jurors Mueller, Steckbeck, Quinnett and Hoehn sworn.)

4 THE COURT: Leave three seats, the first three seats,  
5 if you would, please.

6 Call three more, please.

7 THE CLERK: John Aver, Junior.

8 Vivian Lonak.

9 And Jason Tranchitella.

10 EXAMINATION

11 OF PROSPECTIVE JUROR JOHN AVER, JR.:

12 BY THE COURT:

13 Q First person, is it -- John, is it Aver?

14 A John Aver, Junior, your Honor.

15 Q And where do you live, sir?

16 A Darien, Illinois.

17 Q And how old are you?

18 A 48 years old.

19 Q What's your educational background?

20 A High school and a little bit of college.

21 Q What is your business or occupation?

22 A I'm a stationary engineer at the University of Illinois at  
23 Chicago.

24 Q Are you married?

25 A Yes, I am.

1 Q What does your spouse do?

2 A My spouse, she works for like a workman's comp. company,  
3 like she hears -- I don't know what exactly she does, but she  
4 works for, like, an insurance company with workman's comp.  
5 cases.

6 Q So she works in evaluating or --

7 A Yes.

8 Q -- something along those lines?

9 A Yeah. She don't make any kind of decisions, though, on it.

10 Q Do you have children who are employed?

11 A No.

12 Q Have you or your spouse or any really close family member  
13 to your knowledge ever applied for leave under either the  
14 Federal Family and Medical Leave Act or any other provision  
15 provided for leave?

16 A No.

17 Q Okay. I take it no one has ever been denied leave, to your  
18 knowledge?

19 A No.

20 Q Do you supervise any other employees?

21 A No, I don't.

22 Q Have you ever supervised other employees?

23 A No, I don't, your Honor.

24 Q So you've never participated in a decision either to grant  
25 or deny someone else leave?

1 A No.

2 Q Okay. Have you been on jury duty before?

3 A I have but never on a -- called to a case, your Honor.

4 Q All right. And have you ever been involved personally in a  
5 lawsuit?

6 A No, I haven't.

7 Q All right. Are you familiar with any of the parties or the  
8 lawyers out here?

9 A You aren't related to Paul Caffarelli, are you?

10 MR. CAFFARELLI: No.

11 THE WITNESS: Okay.

12 BY THE COURT:

13 Q All right. The answer is no then?

14 A No.

15 Q All right. Will you follow the law as I state it, even if  
16 you don't agree with it?

17 A Yes, I will.

18 Q Any reason you couldn't be a fair and impartial juror?

19 A No.

20 Q Okay.

21 EXAMINATION

22 OF PROSPECTIVE JUROR VIVIAN LONAK:

23 BY THE COURT:

24 Q Next person is Vivian, is it Lonak?

25 A Lonak.



1 Q Lonak, is that how you pronounce it?

2 Where do you live?

3 A Justice, Illinois.

4 Q How old are you?

5 A 55.

6 Q What's your educational background?

7 A High school.

8 Q And what's your business or occupation?

9 A I'm a train attendant for Amtrak.

10 Q Okay. Are you married?

11 A Yes.

12 Q What does your spouse do?

13 A He's a production -- production supervisor for Azteca

14 Foods.

15 Q What is that business?

16 A Food industry.

17 Q Do you have children who are employed?

18 A Yes, I do.

19 Q What do they do?

20 A My oldest is a locomotive attendant for Union Pacific.

21 My middle son is a staff sergeant in the United States  
22 Air Force.

23 And my youngest son is a gaming attendant.

24 Q Okay. Have you or any of your close family, including the  
25 people you just mentioned, to your knowledge ever applied for

1 leave under either the Federal Family and Medical Leave Act or  
2 any other provision provided for leave like a union contract?

3 A Yes, I have.

4 Q And for what specific purpose?

5 A Medical reasons.

6 Q All right. Have you ever been denied leave?

7 A No.

8 Q How many times? Just once?

9 A Just one time.

10 Q Okay. And was that under -- was that under the federal law  
11 or under a contract or union contract or do you know what was  
12 the basis --

13 A It was under the federal law.

14 Q Pardon?

15 A It was under the federal.

16 Q Okay. So you just filed an application --

17 A Correct.

18 Q -- and they granted it --

19 A Yes.

20 Q -- and that was it?

21 All right. So have you ever been denied leave?

22 A No.

23 Q Do you supervise other employees --

24 A No.

25 Q -- or have you ever supervised --

1 A I have, yes.

2 Q Have you ever been involved in a decision as a supervisor  
3 to either grant or deny leave to someone else?

4 A No.

5 Q Have you been on jury duty before?

6 A No.

7 Q Have you ever been involved in a lawsuit yourself?

8 A Yes.

9 Q Tell us when and what circumstances.

10 A Car accident, personal injury.

11 Q And --

12 A That was --

13 Q You were injured?

14 A Yes.

15 Q And was that the reason for the leave?

16 A No.

17 Q Different situation?

18 A Yeah. The car accident was 35 years ago.

19 Q Okay. Was there a lawsuit? Actually go to trial or did it  
20 get resolved?

21 A It got resolved.

22 Q Are you familiar with any of the parties or the lawyers?

23 A No.

24 Q Okay. Will you follow the law as I state it, even if you  
25 don't agree with it?

1 A Yes.

2 Q Any reason you couldn't be fair?

3 A No.

4 Q All right.

5 EXAMINATION

6 OF PROSPECTIVE JUROR JASON TRANCHITELLA:

7 BY THE COURT:

8 Q All right. The next gentleman is Jason Tranchitella?

9 A Yes, sir.

10 Q Is that close --

11 A You said it fine. Yeah.

12 Q Where do you live, sir?

13 A West Chicago, Illinois.

14 Q How old are you?

15 A 32.

16 Q What's your educational background?

17 A Some college.

18 Q And what's your business or occupation?

19 A I work for a family-owned construction company. General  
20 contractor.

21 Q Are you married?

22 A No.

23 Q Have you ever been married?

24 A No.

25 Q Have you or any of your close family, to your knowledge,

1       ever applied for leave under either the Federal Family and  
2       Medical Leave Act or any other provision provided for leave?

3       A    No.

4       Q    I take it no one has ever been denied leave that you're  
5       aware of?

6       A    No.

7       Q    Do you or have you supervised other employees?

8       A    Yes, I have.

9       Q    All right. And as part of your supervision, have you ever  
10      been involved in a decision either to grant leave to someone  
11      under the Family Leave Act or any other leave provision or deny  
12      it?

13      A    No, I haven't. That's the HR department's job.

14      Q    It came up -- if someone did apply for leave, would it come  
15      to you?

16      A    No, we just forward it to HR.

17      Q    All right. Have you been on jury duty before?

18      A    No, I have not.

19      Q    Have you ever been involved in a lawsuit personally?

20      A    I was a defendant, but my insurance company took care of  
21      it.

22      Q    Was that a result of an accident?

23      A    That was a workplace incident, yes, sir.

24      Q    Okay. So never went really to trial or anything like that?

25      A    My insurance took care of it.

1 Q All right. Will you follow the law as I -- excuse me, are  
2 you familiar with any of the lawyers or the parties?

3 A No, I'm not.

4 Q Will you follow the law as I state it, even if you don't  
5 agree with it?

6 A Yes, sir.

7 Q Any reason you couldn't be fair and impartial?

8 A Nope.

9 Q Okay.

10 (Tendered.)

11 THE COURT: All right. Mr. -- Miss Lonak and  
12 Mr. Tranchitella will be excused.

13 Swear in Mr. Aver.

14 THE CLERK: Stand and raise your right hand.

15 (Juror Aver sworn.)

16 THE COURT: Would you move down and join the others?  
17 Leave two seats. And then call two more, please.

18 THE CLERK: Is there something on the floor there?

19 JUROR: No.

20 THE CLERK: Okay.

21 THE COURT: Two more.

22 THE CLERK: Dorothy Dziura, that's D-Z-I-U-R-A. And  
23 Ines Nevarez.

24 EXAMINATION

25 OF PROSPECTIVE JUROR DOROTHY DZIURA:

1 BY THE COURT:

2 Q Do you pronounce it Dziura? Dziura?

3 A Sure.

4 Q How do you --

5 A Dziura.

6 Q Dziura. Silent D?

7 A Yes.

8 Q Okay. You are Dorothy Dziura then; is that correct?

9 A Yes.

10 Q Where do you live?

11 A Mt. Prospect, Illinois.

12 Q How old are you?

13 A 26.

14 Q What's your educational background?

15 A Bachelor's in marine biology.

16 Q And what is your business or occupation?

17 A I work for Buffalo Wild Wings as a bartender.

18 Q Okay. Are you married?

19 A No.

20 Q Have you ever been married?

21 A No.

22 Q Have you ever had occasion to apply for leave under the  
23 Federal Family and Medical Leave Act or any other leave  
24 provision?

25 A No.

1 Q I take it you've never been denied leave?

2 A No.

3 Q Do you supervise anybody else at your business?

4 A No.

5 Q Have you ever supervised other people?

6 A No.

7 Q So you've never participated in any decision to grant or  
8 deny leave; is that right?

9 A No.

10 Q Have you been on jury duty before?

11 A No.

12 Q Have you ever been involved in a lawsuit?

13 A No.

14 Q Are you familiar with any of the parties or the lawyers?

15 A No.

16 Q Will you follow the law as I state it, even if you don't  
17 agree with it?

18 A Yes.

19 Q Any reason you couldn't be fair?

20 A No.

21 EXAMINATION

22 OF PROSPECTIVE JUROR INES NEVAREZ:

23 BY THE COURT:

24 Q The next lady is Ines Nevarez?

25 A Correct.



1 Q Where do you live?

2 A Highland, Illinois.

3 Q How old are you?

4 A 36.

5 Q What's your educational background?

6 A High school with some college.

7 Q And what is your business or occupation?

8 A I am an administrative assistant for a steel company.

9 Q Are you married?

10 A Yes.

11 Q What does your spouse do?

12 A He is a business owner of automotive transmissions.

13 Q Do you have children who are employed?

14 A I have one child. She's in school.

15 Q Have you or anybody in your family that you're aware of  
16 ever applied for leave under either the Federal Family and  
17 Medical Leave Act or any other provision provided for leave?

18 A Maternity leave. Just maternity leave, if that counts.

19 Q You did apply for and --

20 A For myself.

21 Q Okay. You applied for it and you received it? No problem  
22 at all --

23 A No problem.

24 Q -- is that right? Okay.

25 Have you ever been denied leave?

1 A No.

2 Q Do you supervise other employees?

3 A I have.

4 Q Have you, as a supervisor, either now or in the past, ever  
5 been in a position where you participated in the decision,  
6 either made the decision or participated in granting leave or  
7 denying leave to someone else?

8 A No. Those are not my calls.

9 Q Have you been on jury duty before?

10 A Have. But not for a case. I've been in Lake County.

11 Q Okay. You actually never sat on a case?

12 A Right. I had to go four days, waited, never got called.

13 Q All right. Have you ever been involved in a lawsuit?

14 A No.

15 Q Are you familiar with any of the parties or the lawyers?

16 A No.

17 Q Will you follow the law as I state it?

18 A Yes.

19 Q Any reason you couldn't be fair?

20 A No.

21 Q Okay.

22 (Tendered.)

23 THE COURT: Okay. Would you swear in these two  
24 ladies, please?

25 (Jurors Dziura and Nevarez sworn.)

1           THE COURT: We've completed jury selection. I thank  
2 the people in the back for your patience.

3           What should they do? Go back --

4           THE CLERK: You're done for the day. Call the jury  
5 department tomorrow after 5:00.

6           THE COURT: All right. For the seven of you, we're  
7 going to take a short recess, and then you'll come back in  
8 about ten minutes. We're going to have the opening statements.  
9 It's the opportunity the lawyers have to tell you what this  
10 case is about. I gave you a brief description of what I  
11 understood the case to be about, but the lawyers will flesh in  
12 the actual issues in the case and what you should expect to  
13 hear during the course of the trial.

14           They're designed to be helpful. Oftentimes, testimony  
15 doesn't come in in a perfectly logical or chronological order,  
16 so it's helpful to have an overview is what the lawyers will  
17 give you of what they think the case -- testimony will be.

18           The only word of caution is what the lawyers are --  
19 they are not witnesses. They don't provide evidence. They can  
20 only tell you what they think the evidence will be.

21           So if the lawyer tells you to expect the testimony to  
22 be thus and so, and then during the course of the trial it's  
23 your collective recollection that that wasn't the case, then  
24 you ignore what the lawyers say and you go with the  
25 recollections of what the actual testimony and witness and

1 exhibits will be. But, again, they're designed to be helpful.

2 A couple things, just to -- everybody now has access  
3 to a computer and they have Smart Phones and all this sort of  
4 thing.

5 Please do not attempt to do any independent research,  
6 like find out who the lawyers are or what this case is about,  
7 see if there's anything on the internet.

8 It's very important that you limit your understanding  
9 of the case solely to what you hear in the courtroom.

10 So don't go back, get out your Smart Phone, look up me  
11 or any of the lawyers or the plaintiff or the defendants and  
12 try to do any independent research. That would be totally  
13 improper, and I instruct you not to do that.

14 And please don't discuss the case among yourselves or  
15 with anybody else until you've heard all the evidence and you  
16 heard the instructions of the Court and retire to consider your  
17 verdict. Then you should all band together, all seven of you,  
18 and decide how to decide the fact issues of the case.

19 Don't allow anybody else to give you advice. If you  
20 start telling people I'm involved in a case involving the  
21 Family Leave Act, oh, I've got some advice for you on that, and  
22 I tell you, you should -- that's a terrible act or it's the  
23 best act that ever should be, and blah, blah, blah. And  
24 then -- because the lawyers won't know who told you that or  
25 they haven't had a chance to cross-examine those people, it

1 would be unfair for you to take something like that into  
2 consideration in deciding the case.

3 So we'll try to get this case, as I said, consistent  
4 with justice, as rapidly as possible so you can return to your  
5 regular duties.

6 But I'm going to ask you just to do those things.  
7 Don't try to find out anything about the case or the subject or  
8 anything else until after the case is over and after you've  
9 decided the case. Then you can do almost anything you want.

10 But we're going to take a 10-minute recess. We'll  
11 start promptly at 20 minutes to 12:00 with opening statements.

12 You'll hear from the plaintiff first, and then you'll  
13 hear from the defense.

14 THE CLERK: All rise.

15 Did you have anything to get from the back?

16 THE COURT: By the way, the court -- the jury room  
17 will be locked when you're in here, so you can leave your  
18 belongings in the jury room while you're in here.

19 THE CLERK: You can go out this door and make a left.

20 (Recess taken from 11:31 a.m. until 11:41 a.m.)

21 (In open court out of the presence of the jury.)

22 THE COURT: Ready for the opening?

23 MR. CAFFARELLI: Yes, your Honor.

24 MR. HAYES: Yes, your Honor.

25 THE COURT: Bring the jury in.

Opening Statement - Mr. Caffarelli

1 THE CLERK: Ready?

2 THE COURT: Yes. All set.

3 THE CLERK: Okay.

4 THE COURT: After your opening, we'll break for an  
5 hour, and then come back and then start calling the witnesses.

6 Mr. Caffarelli, are you giving the opening?

7 MR. CAFFARELLI: Yes.

8 THE COURT: Okay.

9 MR. CAFFARELLI: No relation --

10 THE COURT: Mr. Hayes, are you giving the opening?

11 MR. HAYES: Yes, your Honor.

12 THE COURT: Okay.

13 (Jury in at 11:43 a.m.)

14 THE COURT: You can sit anywhere you want. You don't  
15 have to sit where you were selected. Wherever is comfortable.

16 The plaintiff has the burden of proof in the case, so  
17 the plaintiff goes first in virtually every aspect of the case,  
18 including the opening statement.

19 So, Mr. Caffarelli, you may give the opening  
20 statements for Mr. Cuff.

21 MR. CAFFARELLI: Thank you, your Honor.

22 OPENING STATEMENT BY MR. CAFFARELLI:

23 MR. CAFFARELLI: Good morning.

24 THE JURY: Good morning.

25 MR. CAFFARELLI: My name is Alex Caffarelli, and I

Opening Statement - Mr. Caffarelli

1 introduced myself earlier, but I'll introduce myself again.

2 With me is Brad Manewith and Darren Cuff. Darren Cuff  
3 is the plaintiff in this case. And with us is Dave Zehner,  
4 although Mr. Zehner has to leave shortly, so you won't be  
5 seeing him.

6 This should be a relatively simple case. This case is  
7 simple because of what you don't have to do.

8 Unlike most of the cases here, you don't have to  
9 decide whether or not Trans States broke the law. That, as the  
10 judge mentioned, has already been decided by the judge.

11 Trans States interfered with Darren Cuff's rights  
12 under the Family and Medical Leave Act.

13 Now, they can't deny this simple fact. Instead of  
14 honoring his request for FMLA leave, Darren Cuff was fired.

15 Your job at the end of this trial will be to determine  
16 the consequences that Trans States should face. In a civil  
17 lawsuit, those are called damages or what are referred to as  
18 damages, because calculating damages is a job for the jury, not  
19 the judge.

20 And the only damages that Mr. Cuff is asking you to  
21 award are his lost wages and benefits from the time that he was  
22 fired until today. It's been about two years getting to trial.  
23 And these damages, we will argue, were caused by defendants'  
24 conduct.

25 As you know, this case was brought under the Family

Opening Statement - Mr. Caffarelli

1 Medical Leave Act, the FMLA.

2 This law was passed in the 1990s to protect workers  
3 from losing their jobs if they needed time off to treat or  
4 recover from a medical condition, in order to care for a sick  
5 family member, or in order to have birth or care for your  
6 child.

7 Some of you I understand are familiar with the FMLA  
8 from your own work. It normally provides up to 12 weeks of  
9 leave in a year's period. And workers who take the FMLA are  
10 normally guaranteed their jobs when they return from leave.

11 Another benefit of the FMLA is that it doesn't need to  
12 be taken all at once, particularly when you're talking about  
13 medical conditions. It can be taken intermittently. So a day  
14 at a time, a week at a time, whatever is necessary to bring  
15 your condition under control.

16 And the whole purpose of the FMLA was so that  
17 employees wouldn't have to choose between their health and  
18 their job or in the case of a birth between having a baby and  
19 their job.

20 Darren Cuff qualified for the FMLA because of his own  
21 health conditions. That's one of the subcategories under the  
22 FMLA.

23 He suffered from -- he has suffered from Crohn's  
24 disease since he was 13 years old. Crohn's disease, just  
25 briefly, is a condition that eats away at your digestive



Opening Statement - Mr. Caffarelli

1 system. It's a chronic condition. There's no cure. So it's  
2 really about managing the symptoms and living with it. Every  
3 now and then, the condition will flare up, particularly when  
4 Mr. Cuff is under stress.

5 In 2008, he was also diagnosed with bipolar disease.  
6 It's a psychiatric condition that causes mood swings from what  
7 are called manic phases to severe depression. And it's not  
8 happening every day all the time obviously. It's the type of  
9 thing that will flare up under stress.

10 Even though Mr. Cuff has had Crohn's for almost his  
11 entire life and bipolar more recently was diagnosed, he's been  
12 able to work.

13 Less than a year out of high school, Mr. Cuff got his  
14 first job in the airline industry. And for seven years he  
15 worked at Comair Airlines, which is a subsidiary of Delta.

16 In 2006, he applied for and was hired to be a regional  
17 manager for Trans States. And Trans States is the defendant in  
18 this case -- one of the defendants in this case.

19 And Trans States operates regional flights for some of  
20 the major airlines. So when you hear United Express or  
21 American Eagle, Delta Connection, those are typically run by  
22 regional airlines such as Trans States.

23 And in this case, Trans States Holding, the holding  
24 company, owns three airlines: Trans States Airlines, GoJet  
25 Airlines, and Comair -- or Compass Airlines, excuse me.

Opening Statement - Mr. Caffarelli

1           When he was hired in 2006, Mr. Cuff interviewed with  
2 Terry Basham. Mr. Basham is here today.

3           Terry Basham was and is the vice-president of customer  
4 service for Trans States.

5           And during this interview, he had a long discussion  
6 with Mr. Basham where he fully disclosed his medical  
7 conditions, including his medical limitations.

8           Despite these limitations, knowing about these  
9 limitations, Trans States hired Darren Cuff.

10          And Mr. Cuff will tell you that Mr. Basham was very  
11 understanding and promised to work with Mr. Cuff to help him  
12 manage his conditions and get the job done.

13          Mr. Basham told him that because of the nature of the  
14 work, Mr. Cuff would be able to work flexible hours and  
15 sometimes work from home.

16          As a regional manager, Darren Cuff was responsible for  
17 20 airports across the United States.

18          His job was to oversee operations at each one of those  
19 airports and also to act as a liaison between Trans States and  
20 government agencies, such as the FAA and the Department of  
21 Homeland Security.

22          Now, obviously Mr. Cuff couldn't be in all 20 airports  
23 at once, which is why a large portion of his job -- and you'll  
24 hear his testimony -- was done over the phone or by e-mail with  
25 each of the particular stations. And this is why Mr. Basham

Opening Statement - Mr. Caffarelli

1 gave him the flexibility that he needed just to get the job  
2 done.

3 For two years, Mr. Cuff was an excellent employee for  
4 Trans States. He received raises both years and no complaints.

5 When Terry Basham gave his testimony in a sworn  
6 deposition before this lawsuit, he admitted that Mr. Cuff was a  
7 great employee.

8 Darren Cuff gave Trans States, we believe the evidence  
9 will show, 100 percent. He was on nights and weekends. He was  
10 on e-mail. He was on the phone. He did just whatever it took  
11 to get the job done.

12 You'll also hear from Lacy Weber, one of Mr. Cuff's  
13 co-workers. And she'll tell you that he was an excellent  
14 employee and respected by everyone who he worked with.

15 Although Darren Cuff was an excellent employee,  
16 sometimes his condition would flare up, and he would need to  
17 take some time off to recover when he experienced those  
18 flare-ups.

19 And this is where the FMLA comes in.

20 Even though Mr. Cuff was entitled to 12 weeks of FMLA  
21 leave per year, he never took nearly that amount of time.

22 The evidence will show that he just took whatever was  
23 necessary to bring his condition under control and get back to  
24 work.

25 And even when he was still -- when he was sick or he

Opening Statement - Mr. Caffarelli

1 was out on FMLA, the evidence will show that Darren Cuff kept  
2 working. He was the type of employee who, even though he had  
3 the right under the law to take a week or two off to recover,  
4 he was still on e-mail, making phone calls, just making sure  
5 that everything was covered.

6 Now, in December -- in October of 2008, about two  
7 years after Mr. Cuff is hired, Ed Trowbridge became the  
8 managing director for customer and ground service. And  
9 Mr. Trowbridge is here today as well.

10 This was a new position between Mr. Cuff and  
11 Mr. Basham. That meant that Mr. Cuff now reported directly to  
12 Ed Trowbridge instead of reporting directly to Mr. Basham.

13 Now, unfortunately for Mr. Cuff, when Ed Trowbridge  
14 replaced Terry Basham as his direct supervisor, everything  
15 changed.

16 Mr. Trowbridge didn't want to continue the methods  
17 that Mr. Basham and Mr. Cuff had developed in order to help  
18 Mr. Cuff do his job and manage his conditions at the same time.

19 These were the methods that allowed Mr. Cuff to  
20 effectively manage the condition and be a good employee.

21 The evidence will show that Mr. Trowbridge was not  
22 happy about Mr. Cuff's medical issues. He wasn't happy about  
23 the FMLA leaves. And he wasn't happy about Mr. Cuff working  
24 remotely. He wanted Darren Cuff to be on site all the time at  
25 O'Hare Airport.

Opening Statement - Mr. Caffarelli

1           Mr. Trowbridge's insistence that Darren Cuff be on  
2 site all the time exacerbated Mr. Cuff's condition.

3           Instead of being able to manage his flare-ups  
4 effectively, Mr. Cuff had to push through and physically keep  
5 going to work, even when he felt that he medically couldn't do  
6 it.

7           And so as a result, he had more serious flare-ups, and  
8 this started a vicious cycle of having a flare-up, pushing  
9 through going to work, exacerbating the condition.

10           So in September of 2009, he was hospitalized for a few  
11 days after a serious flare-up.

12           When Mr. Cuff returned to work following his  
13 hospitalization in September of '09, he -- Mr. Trowbridge met  
14 with him and disciplined him for attendance. And Mr. Cuff was  
15 told that if his attendance did not improve, he could lose his  
16 job.

17           On December 9th, 2009, so a few months later,  
18 Mr. Cuff's doctor, Dr. Eric Christoff, who is affiliated with  
19 Northwest Memorial Hospital, completed and signed a  
20 certification form requesting that Darren Cuff be granted four  
21 weeks of FMLA leave.

22           This was so that Mr. Cuff could finally try to bring  
23 his conditions under control.

24           And you'll see a copy of that certification form.

25           At this point, Mr. Cuff had used less than half of his

Opening Statement - Mr. Caffarelli

1 available FMLA time, so he should have had more than enough  
2 FMLA days left to get better, to recover, as Dr. Christoff had  
3 ordered.

4 But the evidence will show that for Mr. Trowbridge,  
5 that was the last straw.

6 So instead of granting the FMLA leave, Mr. Trowbridge  
7 wrote an e-mail to Trans States' in-house lawyer in St. Louis,  
8 Mr. David Hayes, quote, requesting guidance. And you'll see a  
9 copy of that e-mail as well.

10 With the help of Mr. Hayes, Ed Trowbridge came up with  
11 a plan. The plan was to claim that Mr. Cuff only worked for  
12 Trans States Airlines subsidiary, not Trans States Holdings,  
13 not GoJet, not any of the other companies.

14 MR. HAYES: Your Honor, objection.

15 MR. CAFFARELLI: It goes to good faith, your Honor.

16 THE COURT: Well, he's indicating what he thinks the  
17 testimony will be. We'll see.

18 MR. CAFFARELLI: And that Trans States didn't have  
19 enough employees in Chicago for Mr. Cuff to qualify for the  
20 FMLA.

21 So a letter was drafted for Mr. Trowbridge to send  
22 back to Mr. Cuff saying that as an employee of Trans States  
23 Airlines, Mr. Cuff didn't qualify for FMLA leave and denying  
24 the four weeks that his doctor had requested.

25 And you'll see a copy of that letter as well.

## Opening Statement - Mr. Caffarelli

1           This came as a shock to Darren Cuff, first of all,  
2       because they had never before questioned his right to FMLA  
3       leave; and, second, because the evidence is overwhelming that  
4       Darren Cuff did not just work for Trans States Airlines. They  
5       gave him a business card that said Trans States Holdings,  
6       Trans States Airlines and GoJet on it. Held him out as a  
7       Trans States Holdings' employee to the Federal Aviation  
8       Administration and the Department of Homeland Security. He was  
9       held out as a contact for all three companies. He had access  
10      to all three internal websites. He managed both the  
11      Trans States Airlines and the GoJet operations around the  
12      country.

13           There's more. And as the Court has instructed you at  
14      the beginning of the day, the Court has already looked at all  
15      of this information and determined that that was wrong, that  
16      for purposes of the FMLA, Mr. Cuff wasn't an employee -- was  
17      not just an employee of Trans States Airlines, but that he, in  
18      fact, was an employee of all of those entities. And that by  
19      claiming he was solely an employee of Trans States Airlines,  
20      the law was violated. The FMLA was violated.

21           Now, Mr. Cuff didn't know that at the time, so Ed  
22      Trowbridge's refusal to grant this FMLA leave greatly increased  
23      his stress levels. And not wanting to lose his job, he didn't  
24      just take it off. He kept coming in to work.

25           But after a few weeks, he realized his health was

Opening Statement - Mr. Caffarelli

1 getting worse. If he didn't take the four weeks of leave that  
2 his doctor ordered, he felt that he would be putting himself in  
3 serious jeopardy.

4 So on December 30th, 2009, he told Ed Trowbridge that  
5 he was going to take the four weeks off that his doctor had  
6 recommended, the four weeks he felt he needed to get better.

7 Now, hedging their bets, again, after speaking with  
8 their lawyer, and without consulting a doctor or medical  
9 expert, Trans States arbitrarily decided that one week should  
10 be enough. It's ten days, but it captures the two weekends.  
11 And they told Mr. Cuff that he would be fired if he didn't  
12 report back to work on January 11th of 2010.

13 So instead of following the medical advice of  
14 Dr. Christoff, Trans States followed the medical advice of  
15 their lawyer.

16 Mr. Cuff was not medically ready to go back on  
17 January 11th. And when he didn't, he was fired.

18 Despite his best efforts, two years later, he's  
19 unemployed, uninsured, and living with his parents. Economy  
20 has not been good, and his options are limited.

21 Again, you don't need to determine whether or not  
22 Trans States violated the FMLA. The only thing you need to  
23 determine at the end of this case are the amount of damages  
24 that Trans States should pay as a result of their conduct.

25 And as I said at the beginning of this case, this



Opening Statement - Mr. Caffarelli

1     should be a simple task, but defendants will likely try to make  
2     it complicated.

3             The reason they do this is to argue that you should  
4     limit the damages based upon a legal doctrine known as  
5     after-acquired evidence.

6             And under this doctrine, if a company discovers  
7     information after the fact that an employee would have  
8     definitely been fired for some other reason, they can argue  
9     that you, the jury, should cut off or limit his back pay. Not  
10    all of it, just as of the date that they discovered that  
11    information, after the termination on January 11th but at some  
12    point between then and now.

13            In other words, it's damage control.

14            Now, the judge will give you precise instructions at  
15    the end of this trial. And the key is to just listen to what  
16    the judge says about those instructions and take in all of the  
17    evidence that you've heard during the trial to reach your  
18    decision.

19            But you'll hear them argue a number of things, that he  
20    never intended to go back to work, that he misused some of his  
21    previous sick days.

22            The evidence will show that none of these things,  
23    whether or not they're even true -- and we contest that many of  
24    these things are even true -- would have actually led to  
25    Mr. Cuff's termination.

Opening Statement - Mr. Caffarelli

1           It's the same with the rest of their arguments.

2           Now, I can continue to go through each one of the  
3 arguments I think that they're going to make and discuss them,  
4 but I'll just let them say whatever they're going say.

5           I'll let you hear the testimony for yourselves and  
6 leave the analysis for closing arguments.

7           After you've heard all the testimony and seen all the  
8 documents, the judge will instruct you on the law, and we'll  
9 ask you what you believe are the appropriate amount of damages  
10 in this case.

11           And, again, this is an FMLA case, so this is not a  
12 personal injury case where punitive damages or emotional  
13 distress or any of that comes into play.

14           It's just fact -- it's a matter of calculating the  
15 back pay.

16           We appreciate the time you've taken to serve on this  
17 jury. We're going to try to keep it short. I know it's not a  
18 convenient thing to do. But you do perform a vital role  
19 because the FMLA would be meaningless, any law would be  
20 meaningless unless a jury were there behind the law to enforce  
21 it.

22           Thank you.

23           THE COURT: Mr. Hayes, you may give the opening  
24 statements for the defendants.

25           OPENING STATEMENT BY MR. HAYES:

Opening Statement - Mr. Hayes

1 MR. HAYES: Thank you, your Honor.

2 It's still good morning, Ladies and Gentlemen.

3 Again, thank you for being here. My name is David  
4 Hayes.

5 We've introduced the folks at the table again, but  
6 Allison is a lawyer in my office. Leslie Cavender. Mr. Basham  
7 is here on behalf of the three companies. And Mr. Trowbridge  
8 himself is a defendant.

9 It shouldn't surprise you a lot that we have a lot of  
10 disagreement about part of this, part of which we don't  
11 disagree with.

12 The judge has told us that when the calculation was  
13 made at the company that we did it wrong, but "wrong" doesn't  
14 mean that Mr. Cuff is entitled to any money. That's a question  
15 for you to decide.

16 As you came to work or you come wherever you're going,  
17 you're going 56 miles an hour, you're breaking the law on the  
18 highway. That doesn't mean you should get hundreds of  
19 thousands of dollars.

20 You heard, and I thought it was very nice of opposing  
21 counsel there, to walk you through the fact that Mr. Trowbridge  
22 is going to testify that 100 percent of the time, if he's going  
23 to turn somebody down for FMLA, he calls Legal and asks them  
24 that question.

25 That's not sinister. We're not embarrassed about

Opening Statement - Mr. Hayes

1     that. We're going to tell you about that. He's going to tell  
2     you that before he turned Mr. Cuff down, he called Legal to say  
3     what should I do?

4             Now, the judge, years later, has determined that we  
5     were wrong. But that doesn't mean, we believe, that Mr. Cuff  
6     is entitled to damages.

7             In addition, we talked a little bit about our  
8     operation.

9             I think what's very important to understand is at  
10    O'Hare Airport where Mr. Cuff worked, he was the only manager.  
11    That is, we have dozens of airplanes coming in, thousands of  
12    passengers every day, riding on United Express. The regional  
13    jets, the middle-sized jets operating there, he's our only  
14    person. He's it. When he's not there, there's no one there  
15    managing the relationship with our passengers, looking out to  
16    make sure that airplane and the bags and the people get where  
17    they're supposed to go. He's the man up there.

18            That's important because when we talk about the end  
19    game of this, Mr. Trowbridge is going to testify that he's  
20    working with Darren, that the company has made a decision, in  
21    consultation with Mr. Trowbridge, that, in fact, we didn't  
22    believe he was eligible for this FMLA.

23            Again, don't want to argue that. The judge has  
24    already decided that.

25            This -- but this is Christmastime. If any of you have

Opening Statement - Mr. Hayes

1 ever been to O'Hare at Christmastime, there's no time we need  
2 him there more than right then.

3 Mr. Trowbridge is going to tell you about Darren not  
4 returning his calls, not even giving us an update on what was  
5 going on with him at that point.

6 It's a very -- some of the issues I guess are very  
7 simple. We agree with that.

8 The lost wages calculation, up till today, again, we  
9 don't think that's the appropriate number, if there's a number.  
10 Because just because we were wrong at the time that decision  
11 was made doesn't mean Mr. Cuff is entitled to any money.

12 Also opposing counsel briefly told you about  
13 after-acquired evidence.

14 I think that's very relevant.

15 Mr. Trowbridge is going to tell you that he has a  
16 different management style than Mr. Basham.

17 Mr. Basham is a vice-president. Supervises hundreds  
18 and hundreds of employees. Didn't focus a laser on Darren.  
19 Yeah, Darren, whatever is going on -- he's going to tell you  
20 that he had a very loose management style. So he didn't follow  
21 up.

22 Mr. Trowbridge, good or bad, is going to tell you that  
23 he's a much more hands-on manager. You're going to learn that  
24 Mr. Trowbridge used to manage hundreds of individual hourly  
25 employees. And he keeps track, very detailed, of these

Opening Statement - Mr. Hayes

1 records.

2 He's also going to tell you, at that time period you  
3 heard about where things changed, that he sat down with Darren,  
4 gave him in writing, which you're going to see, his  
5 expectations for Darren. Hey, Darren, I'm your new boss, and  
6 I'm going to expect you to do these things, including you can  
7 still take time off, but you just need to keep me posted on  
8 what's going on so I know what's going on at O'Hare. Because  
9 Mr. Trowbridge and Mr. Basham and the company is all  
10 headquartered in St. Louis. We don't have offices up here  
11 other than Mr. Cuff's office.

12 We think that, again, is very, very important.

13 You're going to hear testimony from Darren's doctor.  
14 And Darren's doctor, at least in part, is going to tell you  
15 that Darren disregarded his medical advice. We think that's  
16 very relevant in this case.

17 We're also going to tell you that there were multiple  
18 times, and we're going to show you evidence, where he would  
19 tell Mr. Basham or Mr. Trowbridge that he was at work. Little  
20 Blackberry. Or the telephone. Or that he was going to see the  
21 doctor. Except there's no record at the doctor of him being  
22 there. Don't know where he was. But when he told his employer  
23 that he was at the doctor, he wasn't at the doctor.

24 We're going to go through multiple examples of that  
25 for you because we think that's, again, very, very important.

Opening Statement - Mr. Hayes

1           The change in management that you're going to hear  
2 testimony about, remember, there's nothing untoward or illegal  
3 about that.

4           The company restructured itself, and Mr. Basham was no  
5 longer Darren's boss. It was Mr. Trowbridge. It was just a  
6 change in management.

7           Their different styles affected Darren, and you're  
8 going to see an e-mail where he complained about it, but we're  
9 free to do that.

10           A company is free to change its management, especially  
11 when we put an employee on notice by telling him, in writing,  
12 here's the expectations, here's what we expect you to do.

13           Very important issue for us.

14           One of the issues that came up, again, in the opening,  
15 and we couldn't disagree more, that there was this serious  
16 flare-up at one point that was caused by Darren doing so much  
17 work when he shouldn't be there?

18           We don't think that's true at all.

19           We think the evidence you'll hear is that if he had  
20 done what his doctor had said, he wouldn't have had a serious  
21 flare-up.

22           It wasn't him coming to work that was causing these  
23 flare-ups. It was his disregard of the doctor and not taking  
24 the right medicines and doing all these other things.

25           We think that that's very, very important.

Opening Statement - Mr. Hayes

1           When the plaintiff talks about the liability issue, as  
2 I said, we agree that there's no question that the judge has  
3 already decided that we're responsible.

4           But Mr. Trowbridge is going to tell you that as a  
5 manager of over 20 years experience, he looked at what the law  
6 says. And the law talks about that you have to have 50  
7 employees within 75 miles of the work site. That's what it  
8 says if you get FMLA. We had Darren.

9           Now, years later, his lawyers -- and the Court agreed,  
10 ultimately -- that because there were multiple companies, that  
11 there were at least this number of employees, and that,  
12 therefore, we violated the law.

13           But, remember, what you're here to decide, in part, is  
14 whether Mr. Trowbridge, who is here being sued individually, is  
15 responsible for reading a law that says 50 employees within 75  
16 miles. How many employees do we have in Chicago? He's going  
17 to tell you that he had Darren.

18           I think other than my remark about Christmas, I think  
19 I'm pretty much there.

20           We're going to give you some testimony that we think,  
21 again, is very relevant. We don't want to drag it out. We  
22 don't want to go on for days. But we think it's important, for  
23 example, that when Darren says, "I'm taking a sick day" or "I'm  
24 going to my high school reunion, can I have a couple of days  
25 off around it," and then we find out that he was actually at a



Opening Statement - Mr. Hayes

1 job interview? We think that's very relevant for you to  
2 consider as you decide whether or not Darren is entitled to \$1,  
3 \$10, or no dollars.

4 I think the evidence, as we walk through it, will show  
5 you clearly that while we were mistaken in our interpretation  
6 of the FMLA, that Mr. Trowbridge did his very best with the  
7 law, made a mistake. We're here today. But you don't --  
8 you're not required to award him any money just because we made  
9 a mistake.

10 Thank you for your service.

11 I hope we won't be here all week, as he said, but we  
12 think this case is a little more complicated than the  
13 plaintiff's.

14 Thank you.

15 THE COURT: Do you want to get started or should we  
16 break for lunch now? Do you want to --

17 MR. CAFFARELLI: Let's take a -- your Honor, maybe a  
18 break to --

19 THE COURT: All right. We'll suspend till  
20 1:00 o'clock then for lunch. And then we'll start hearing the  
21 evidence at 1:00 o'clock.

22 So have a nice lunch time. And we'll see you -- be  
23 back about 25 -- or 5 minutes to 1:00, and then we'll get  
24 started promptly at 1:00.

25 (Lunch recess taken.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the  
record of proceedings in the above-entitled matter.

/s/ GAYLE A. McGUIGAN  
Gayle A. McGuigan, CSR, RMR, CRR  
Official Court Reporter

March 26, 2012  
Date